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BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES

Application Number: 09/910,520
Filing Date: July 20, 2001
Appellant(s): FARCHIONE, SAMUEL

Mark D. Schneider

For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 06/27/2008 appealing from the Office action mailed

01/30/2008.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

5,478,238	Gourtou et al	12-1995
4,987,552	Nakamura	01-1991
5,311,293	MacFarlane et al	05-1994
5,206,804	Thies et al	04-1993

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claims 1-7, 14, 16-17, 20, 22-23, 27, 32-34, 37, and 39-40 are rejected under 35 U.S.C. 103(c) as being obvious over Gourtou et al (US 5478238) in view of Nakamura et al (US 4987552).

Gourtou teaches a method for selecting fashion information for an individual including: providing a style database including complimentary fashion information having cosmetic data and physical characteristics data; providing a personal characteristic database adapted to receive physical characteristic data for an individual (col. 7: 14-42); providing an input device operable to capture physical characteristics data about the individual (input means 24); capturing with the input device physical characteristic data of the individual (using the camera or entering information directly); receiving in the personal characteristic database physical characteristic data for at least two physical characteristics for an individual; comparing the physical characteristics data for the individual with the style database to identify complimentary fashion selections that are appropriate for the individual based upon the physical characteristic data received in the personal characteristic database and generating a data set that includes complimentary fashion selections that are appropriate for the individual based upon the physical characteristic data received in the personal characteristic database (col. 7:57-col. 8:25) including a printer (col. 8: 42-43) for outputting the results in a hardcopy format, as in claim 1 and substantially similar limitations in claims 16, 20, 22, 27, 32, 33, 37 and 39. The cosmetic data includes at least color (claim 5) as is shown as the foundation palette and described in at least col. 9: 24-51. The physical characteristics can include skin color, skin tone, hair color and/or eye color (claims 6, 17, and 34) as is shown in at least col. 7: 14-42. The input device including a digital camera (claims 7, 23, and 40) is shown in col. 6: 57.

Gourtou fails to teach that the database is accessible over a network (claim 14). However, the applicant has admitted that such is old and well-known in the art. It would have been obvious to one of ordinary skill in the art to include this feature into the Gourtou system so as to allow for a centralized database of all the information necessary to operate a plurality of the machines.

Gourtou et al further fails to teach that the input means captures an image of the individual that includes at least two physical characteristics, as in independent claims 1, 16, 27, 33. Nakamura teaches that photos may be used to determine other characteristics of the user, see col. 3: 11-21. Further, Gourtou fails to teach the inclusion of instructional data, including a multimedia or video presentation (claims 2-4). Nakamura shows this feature to be old in the style art. Nakamura discloses personalized cosmetics videos (col. 1, 30-36). Nakamura teaches that women request this information frequently (col. 1, 18-27). It would have been obvious to one of ordinary skill in the art at the time of the applicant's invention from the teaching of Nakamura to modify the style database of Gourtou by including the instructional data of Nakamura to provide information that women request frequently and to facilitate learning of the proper application of cosmetics to achieve the desired effects.

Claims 12, 13, 18, 19, 28-30, 35 and 36 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou et al (US 5478238) in view of Nakamura (US 4987552) further in view of MacFarlane (US 5311293).
Gourtou and Nakamura fail to teach that the database includes clothing information, including size data, style data, fabric color, or texture data (claims 12, 13, 18, 19, 28, 29, 35, 36). MacFarlane teaches the use skin tone information in a computer system for determining complimentary fashion information. MacFarlane teaches using the system for fabric selections, including fabric color in at least col. 3: 66-col. 4: 22, col. 4: 35-45, and col. 17:11. It would have been obvious to one of ordinary skill in the art to include the additional database options of MacFarlane into the invention of Gourtou to provide additional so as to allow the user to coordinate clothing colors along with make-up choices.

Claims 11, 21, 31, and 38 are rejected under 35 U.S.C. 103(a) as being unpatentable over Gourtou et al (US 5478238) in view of Nakamura (US 4987552) or Gourtou et al (US 5478238) in view of Nakamura (US 4987552) further in view of MacFarlane (US 5311293), in view of Thies et al (US 5,206,804).
Gourtou and MacFarlane fail to explicitly teach that the style database further comprises footwear information. Thies shows this feature to be old in the style art. Thies discloses a database containing

footwear information (co/. 6, 66-68). It would have been obvious to one of ordinary skill in the art at the

time of the applicant's invention from the teaching of Thies to modify the style database of Gourtou and

MacFarlane to include the footwear of Thies to provide more fashion options for the user.]

    (10) Response to Argument

<u>First Ground of Rejection as it pertains to independent claims 1, 16, 27, and 33</u>

Appellant asserts that one of ordinary skill in the art would not have looked at the combination of Gourtou

et al and Nakamura et al, nor does the combination teach the invention as claimed. To support this

assertion the appellant recites the importance of automatic capture of at least two physical characteristics

of the individual as input into the personal characteristics database. In making this assertion the

appellant is arguing limitations which are not recited in the claims.

The pertinent recitations from claim 1 recite:

        "providing an input device operable to capture an image of the individual, the image comprising
        data of at least two physical characteristics about the individual;
        capturing with the input device an image of the individual comprising data for at least two physical
        characteristics of the individual;
        receiving in the personal characteristics database physical characteristics data for at least two
        physical characteristics for the individual"

Contrary to appellant's argument the claims do not require the physical characteristics captured by the

input device to be the physical characteristics received in the personal characteristics database. The

claims make no tie between the image captured by the input data and the physical characteristics

received in the personal characteristics database. Appellant's claims merely require an input device

operable to capture and capturing an image that shows two physical characteristics of the user. There

are no further recitations which state that these same personal characteristics are then transferred to the

personal characteristics database. Gourtou et al teaches a video camera (element 14) which can be

used to capture color images (see col. 6: 57-66) and using those color images for determining the skin

tone of the user (col. 7: 5-13). Nakamura et al teaches that photos may include multiple physical

characteristics of an individual. Given these teachings, the examiner maintains that it would have been obvious to one of ordinary skill in the art to use the camera of Gourtou et al to capture a color image including multiple characteristics of the user to allow for the viewing/storage of an image including additional characteristics of the user.

Claims 27 and 33

Appellant generally asserts that the step of "receiving in the style database a requested result for the individual" is wholly untaught by the prior art. The examiner notes that one the intent of the Gourtou et al invention is to determine a foundation color that most closely matches the individuals natural color tone (see col. 7: 42-44). It is a programmed feature of the Gourtou invention, and thus inherent, that the style database receives the information that the individual is requesting the result of proper foundation color. Nakamura additionally teaches this limitation throughout the disclosure. In this instance the user is requesting a video of instructional information that is formulated to be specific to their characteristics.

Rejections including the MacFarlane Invention

Appellant makes the assertion that Macfarlane teaches away from its combination with other references based upon the quotation from col. 1: 30-32. The examiner firstly notes that Macfarlane is being used solely for the teaching of databases in addition to cosmetics information which can be implemented when attempting to determine proper color choices for a user based upon personal characteristics of the user. The appellant is taking the citation of MacFarlane out of context in making the assertion that it teaches away from the use multiple characteristics. MacFarlane recites:

> "Recently, numerous proposals for identifying colors of, for example, clothing makeup, hair colorants, and the like, based upon an individuals person's coloration have been put forth. Some of these proposed techniques have taken into account the color of the person's complexion, but have incorrectly emphasized redness and have also wrongly relied upon eye color, color of hair, and even racial background to assign color categories to the person." (col. 1: 25-33)

Based upon this complete citation, it appears that MacFarlane is merely stating an opinion relating to the

color selection techniques of the prior art. It is noted that this citation further supports that the prior art

teaches using personal characteristics to determine fashion selections other than just cosmetics from the

personal characteristics of a user. "A known or obvious composition does not become patentable simply

because it has been described as somewhat inferior to some other product for the same use." In re

Gurley, 27 F.3d 551, 554, 31 USPQ2d 1130, 1132 (Fed. Cir. 1994).   Given this, the statements of

MacFarlane are sufficient to disqualify it as prior art for its teachings of databases, nor would it discourage

one of ordinary skill in the art from considering the databases taught there in when considering the state

of the art as it relates to color matching based upon personal characteristics.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals

and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

/Kathleen Mosser/

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